THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 24821 OF 1999

Dated 29th August 2007

Between:

M/s.Lee & Marshall,
rep. by its Managing Director.

…Petitioner

and

The Govt.of A.P., rep.by its Secretary,
Cooperative Department, Secretariat,
Hyderabad & others

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 24821 OF 1999

O R D E R:

The 3rd respondent is a Cooperative Urban Bank (for short "the Bank"). The petitioner is a partnership firm, which comprises of the wife and children of one Sri S.S.Zafar. The firm opened a Current Account, being 118/A, in the Bank. S.S.Zafar is a member of the Bank. The petitioner availed the facility of Overdraft, but did not replenish the same, within time. Therefore, the Bank initiated proceedings, under Section 61 of the

A.P. Cooperative Societies Act (for short "the Act"), before the Arbitrator. The petitioner raised a preliminary objection, as to the maintainability of the proceedings, against it. It was pleaded that the arbitration proceedings, under Section 61 of the Act, can be initiated, only against a member of the Cooperative Society, and not against a non-member. The application was opposed by the Bank, and ultimately, through order dated 19.5.1997, the Arbitrator overruled the objection. Aggrieved thereby, the petitioner filed C.T.A.No.175 of

1997, before the Cooperative Tribunal, Hyderabad. The appeal was dismissed on 28.9.1999. Hence, this writ petition.

Sri V.Ajay Kumar, learned counsel for the petitioner, submits that admittedly, the petitioner is not a member of the Bank, and in that view of the matter, initiation of proceedings under Section 61 of the Act against it, is impermissible and untenable. He contends that the Arbitrator, as well as the Tribunal, were impressed mostly by the kinship of the partners of the petitioner firm with S.S.Zafar.

Learned Government Pleader for Cooperation, on the other hand, submits that the question as to whether the petitioner is a member, or an entity claiming its rights through a member of the Bank, is a mixed question of fact and law, and cannot be decided as a preliminary issue.

For the most part of it, the Cooperative Banks deal only with their members. The petitioner claims that as a partnership firm, it never secured membership with the Bank. Much controversy arose, on account of the fact that the petitioner is represented by its G.P.A. holder, S.S.Zafar, who in turn is admittedly a member of the Bank. The legal implication of this aspect needs to be considered, only on the basis of the evidence that is to be adduced by the concerned parties. The issue raised by the petitioner is not so technical, or succinct, that it can be decided by making a mere reference to any provision of law. Not only the manner in which the Bank undertakes such business, but also the *inter se* relation with S.S.Zafar, and in particular, the role played by him in securing the facility of Overdraft, needs to be examined, along with other issues.

Therefore, the writ petition is disposed of, upholding the orders under challenge, but directing that the issue raised by the petitioner shall be decided along with other issues, on the basis of the evidence

that may be adduced by the parties. There shall be no order as to costs.

_____

29th August 2007

PAN